



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/C/79/Add.71
18 November 1996

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

GABON

1. The Committee considered the initial report of Gabon (CCPR/C/31/Add.4) at its 1541st to 1543rd meetings, on 28 and 29 October 1996, and adopted the following observations.

A. Introduction

2. The Committee welcomes the opportunity to initiate its dialogue with the Government of Gabon while regretting that this follows a lapse of over 12 years in the submission of the report by the State Party. While the Committee regrets the scarcity of information contained in the written report, it expresses its appreciation for the high-level delegation, as well as for the detailed and up-dated additional information provided for by the delegation in response to the questions posed by the Committee.

B. Factors and difficulties affecting the application of the Covenant

3. The Committee notes the existence in the State party of customs and traditions, particularly in the area of equality between men and women, which may impede the full observance of relevant provisions of the Covenant.

¹At its 1556th meeting, held on 6 November 1996.

C. Positive aspects

4. The Committee welcomes the positive political evolution of Gabon towards a multi-party and pluralistic democracy since the entry into force of the 1991 Constitution and its amendment of 18 March 1994. It notes with satisfaction the establishment in 1987 of a Ministry of Communication, Culture, Art and Human Rights, which includes human rights among the subjects for which it has responsibility. The Committee appreciates the statement made by the delegation to the effect that the Government intends to establish, as a statutory, autonomous body, a National Human Rights Commission for the promotion and protection of human rights.

5. The Committee welcomes Gabon's accession without any reservation to various international human rights instruments.

6. The Committee notes with satisfaction that pursuant to the introduction of the multi-party system, 20 political parties have been created and that, further to the promulgation of the 1994 Labour Code and of the 1993 Act on trade-union organizations of public servants, the previous trade union monopoly system has been removed.

7. The Committee appreciates the statement by the delegation that information on international human rights instruments and in particular of the provisions of the Covenant would be disseminated among the public.

D. Principal subjects of concern

8. The Committee regrets that the opportunity was not taken by the drafters of the Constitution to include in the 1994 Constitution, which refers to other international human rights instruments, a specific reference to the Covenant and its legal relationship with the domestic legal order. It further regrets that all rights provided for in the Covenant are not incorporated into domestic law and that effective remedies are not provided in all cases of violation of rights protected under the Covenant.

9. The Committee is concerned that the non-discrimination clauses in the Covenant, as laid down in its articles 2, 3 and 26 are not fully reflected in the Constitution. Particular concern is expressed at the prevailing discriminatory attitudes in society towards women and at the insufficiency and lack of effectiveness of measures adopted to prevent them.

10. The Committee is concerned about the lack of safeguards and effective remedies available to individuals during a state of emergency and particularly regrets the lack of information on the situation of non-derogable rights in such circumstances.

11. The Committee regrets that despite the Government's declared policy of not applying the death penalty, no legal steps have yet been taken to abolish it.

12. The Committee is concerned that the guarantees contained in articles 7, 9 and 10 of the Covenant are not fully complied with either in law or in

practice. In particular, it is seriously concerned about the length of time that individuals may have to spend in police custody and pre-trial detention.

13. The Committee is concerned about the practice of imprisonment for civil debt, in contravention of article 11 of the Covenant.

14. The Committee is also concerned about the "dilapidated state of jail cells" and notes that insufficient measures have been taken to provide law enforcement officials with appropriate training in the field of human rights, and to inform arrested persons and detainees of their rights. The Committee further deplores the fact that the police force is a component of the country's military forces and, as such, is subject to the military command of the Ministry of Defense.

15. The Committee is concerned about the lack of information on measures to ensure the independence and impartiality of the judiciary in conformity with article 14 of the Covenant.

16. With regard to the rights of non-Gabonese citizens and refugees living in Gabon, the Committee is concerned about legal impediments to their freedom of movement within the country as well as by the requirement of an exit visa for foreign workers, which run counter to the provisions in article 12 of the Covenant. It is particularly worried by the appalling conditions prevailing in refugee centres, including at the Libreville Detention Camp, which led to the death of a number of persons through suffocation and dehydration.

17. The Committee is concerned about the lack of measures taken to implement the rights of persons belonging to minorities, as set forth in article 27 of the Covenant.

E. Suggestions and recommendations

18. The Committee recommends that the Covenant be incorporated in the domestic legal order and that its provisions be made directly applicable before the courts. In this connection, the Committee emphasizes the importance of establishing a National Commission on Human Rights as a permanent and independent mechanism to monitor the effective implementation of the Covenant and to provide training to law enforcement officials and appropriate information to the public.

19. The Committee recommends that all grounds on which discrimination is prohibited, as provided for in articles 2 and 26 of the Covenant, be incorporated in the relevant provisions of the Constitution. It further recommends that article 2 of the Constitution be amended to ensure its compatibility with articles 2 (1), 3 and 26 of the Covenant and that affirmative measures be taken to strengthen the participation of women in the political, economic and social life of the country and to overcome the discriminatory effects of customary laws.

20. The Committee recommends that the State party urgently adopt and incorporate all relevant provisions of article 4 of the Covenant into the Constitution.

21. The Committee recommends that the State party consider the abolition of the death penalty and accession to the Second Optional Protocol to the Covenant.

22. The Committee recommends that all legal provisions or executive orders be reviewed to ensure their compatibility with articles 7, 9 and 10 of the Covenant and their effective implementation in practice. Urgent steps should be taken to review the duration of police custody and preventive detention and to ensure the independent investigation of all allegations of ill-treatment by police and prison officers.

23. The Committee recommends that prison conditions should be brought into compliance with article 10 of the Covenant and with the United Nations Standard Minimum Rules for the Treatment of Prisoners and to make these standards accessible to the police, armed forces, prison personnel and other persons responsible for holding interrogations as well as to persons deprived of their liberty.

24. The Committee urgently recommends the abolition of imprisonment for civil debt, in compliance with article 11 of the Covenant.

25. The Committee strongly recommends that the State party take the necessary measures to ensure that the police be transformed into a civilian force not subject to the military command of the Ministry of Defence. The Committee also recommends that the State party include in its second periodic report information on measures to ensure the independence and impartiality of the judiciary.

26. Existing provisions such as article 1, paragraph 3 of the Constitution limiting or restricting the exercise of the right to freedom of movement for non-Gabonese citizens, including the requirement of exit visas should be reviewed to bring the legislation fully in conformity with article 12 of the Covenant. The Committee further recommends that the State party consider adopting measures to improve refugee status and living conditions in refugee centres.

27. The Committee recommends that the Government of Gabon develop information and awareness programmes on the principles and provisions of the Covenant in the various languages spoken in Gabon. Additionally, the Committee recommends that human rights education be provided at all levels in schools and comprehensive human rights training be provided to all segments of the population, including law enforcement officers and all the persons involved in the administration of justice. In this regard, the Committee suggests that the State party avail itself of the technical cooperation services of the High Commissioner/Centre for Human Rights.

28. The Committee encourages the State party to disseminate widely the State party's report and the concluding observations adopted by the Committee following its consideration of the report.

29. The Committee recommends that full and comprehensive information on the implementation of the provisions of the Covenant, in law and in practice, be incorporated in the State party's next periodic report.



**International covenant
on civil and
political rights**

Distr.
GENERAL

CCPR/C/79/Add.72
18 November 1996

ENGLISH
Original: SPANISH

HUMAN RIGHTS COMMITTEE
Fifty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

PERU

1. The Committee continued its consideration of Peru's third periodic report (CCPR/C/83/Add.1 and HRI/CORE/1/Add.43/Rev.1) at its 1547th and 1548th meetings, on 31 October 1996 (CCPR/C/SR.1547 and 1548), and addressed questions left pending after the initial consideration of the report at its fifty-seventh session, at which urgent issues had been examined. In the light of its further consideration of the report, it adopted the following observations and recommendations at its 1555th meeting (fifty-eighth session), held on 6 November 1996:

A. Introduction

2. The Committee welcomes the State party's third periodic report and is gratified by the continuation of the dialogue initiated with the delegation. However, the Committee regrets that the report does not contain sufficient reliable information on current legal provisions in Peru relating to a number of the rights covered in the Covenant or on the actual observance of human rights.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee is aware that Peru has been affected by terrorist activities, internal disturbances and violence. In the Committee's view, although the State has both the right and the duty to adopt vigorous measures to protect its population against terrorism, such measures must not violate the rights protected by the Covenant.

4. The Committee notes with satisfaction that the Constitutional Court and the Ombudsman's Office have commenced activities and that units specializing in constitutional matters and the rights of women have been set up within the Ombudsman's Office. It also takes a positive view of the establishment of the National Register of Detainees and Persons Sentenced to Custodial Sentences and the organization of training courses for lawyers and administrative personnel with the aim of improving the administration of justice.

5. The Committee also welcomes the establishment of the Standing Commission on the Rights of Women and of other organs designed to foster equality among men and women in Peru. It further notes the announcement of the establishment of the Ministry of Women and Human Development and expresses the hope that the Ministry will make a valuable contribution to ensuring that women in Peru fully enjoy the human rights enshrined in the Covenant. In the same connection, it appreciates Peru's ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

6. The Committee welcomes with satisfaction the State party's report on the establishment of offices to provide advice and care in cases of violence and abuse against children and adolescents and the programmes introduced to assist children as part of the measures to solve the problem of displaced persons. In this connection, the Committee commends the establishment of the National Technical Commission on Displaced Populations and the other measures being taken to solve the problems of displaced persons, and welcomes the fact that, according to the Government, 56 per cent of the peasant population have returned to their places of origin.

D. Principal subjects of concern

7. The Committee regrets that the constitutional status extended to the Covenant by Peru's 1979 Constitution has been substantially diminished, thereby reducing the protection previously enjoyed by individuals in Peru as regards the rights enshrined in the Covenant.

8. The Committee once again deplores the fact that Peru has ignored both the concerns expressed by the Committee in the observations adopted when it concluded its consideration of the first part of Peru's third periodic report and the suggestions and recommendations made in those same observations, arguing that Peru is entitled to give precedence to considerations of security or domestic policy over its obligations under the Covenant. The Committee considers that, in conformity with international law, article 1 of the Covenant does not authorize the State to adopt a new Constitution that may be incompatible with its other obligations under the Covenant. The Constitution is part of the legal order of the State and as such may not be invoked as grounds for exemption from compliance with an international obligation freely entered into by the State.

9. The Committee in particular deplores the fact that the recommendations relating to the amnesty laws (CCPR/C/79/Add.67, para. 20) have not been followed and that no effective remedy is available to allow the victims of human rights violations by State agents to claim compensation. It also regrets the lack of information on the fate of the recommendations made in

paragraphs 22, 23 and 26 and the failure to respond to the recommendation made in paragraph 24.

10. The Committee takes note of the measures adopted by Peru to pardon persons convicted of terrorism. Notwithstanding its satisfaction at the release of 69 persons, the Committee considers that the pardon does not provide full redress to the victims of trials conducted without regard for due process of law and repeats the recommendation made in paragraph 21 of its observations, which includes the need to establish an effective mechanism, at the initiative of the State, to revise all the convictions handed down by the military tribunals in treason and terrorism cases.

11. The Committee regrets the fact that Peru has not only failed to take measures in response to the recommendation made in paragraph 25 of the observations, but has on the contrary extended, only a few days before the second part of the report was considered, the system of "faceless judges". The Committee expresses its profound concern at this situation, which undermines the judicial system and will again lead to the conviction of innocent persons without a proper trial.

12. The Committee appreciates the information provided by the State on communications Nos. 201/1986, 203/1986, 263/1987 and 309/1988, which are still pending, but regrets that the State's efforts have not led to proper redress for the victims. At the same time, the Committee deplores the lack of information on the observance of Act No. 23.506, ordering immediate compliance with the Committee's observations through the procedure employed to enforce judgements handed down by national courts against the State.

13. The Committee regrets the lack of full and precise information on the legal status of women and on their enjoyment of the rights enshrined in the Covenant, particularly as regards their legal capacity, the frequency of violence and sexual abuse against female detainees or prisoners, legal and practical restrictions in the labour sphere and the impact of recent laws and programmes designed to solve the problem of violence against women.

14. The Committee expresses its concern about the existence of a number of provisions of the Civil Code that discriminate against women, such as the difference in the minimum age required for matrimony and the fact that single mothers aged under 16 lack legal capacity to recognize their children. This gives rise to problems of compatibility between Peruvian legislation and articles 3, 23, 24 and 26 of the Covenant.

15. The Committee notes with concern that the law still contains a provision exempting a rapist from punishment if he marries his victim and another which classifies rape as an offence prosecutable privately. The Committee is also concerned that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape and that clandestine abortions are the main cause of maternal mortality. These provisions not only mean that women are subject to inhumane treatment but are possibly incompatible with articles 3, 6 and 7 of the Covenant.

16. The Committee notes with concern that when cases that might lead to a divorce are heard (physical or mental ill-treatment, serious injury and

dishonourable conduct), the law instructs judges to take into consideration the education, habits and conduct of both spouses, a requirement that might easily lead to discrimination against women from the lower socio-economic strata.

17. In the same connection, the Committee is concerned that in Peru socio-economic criteria are used to group convicted and unconvicted prisoners and deplores the lack of information on the exact significance of this policy, as well as the lack, in general, of detailed information on conditions of detention, to enable it to assess their compatibility with article 10 of the Covenant.

18. The Committee remains deeply concerned about the power of the police to decide to hold a person incommunicado for up to two weeks.

E. Suggestions and recommendations

19. The Committee recommends that the necessary legal measures should be taken to ensure compliance with the obligations to respect and guarantee the rights recognized in the Covenant, in conformity with its article 2, paragraph 1.

20. The Committee reiterates the need for Peru to consider adopting effective measures in the fields referred to by the recommendations made in paragraphs 21, 22, 23, 24, 25 and 26 of the observations made on completion of the consideration of the first part of the State party's third periodic report.

21. Regarding communications Nos. 202/1986, 203/1986, 263/1987 and 309/1988, the Committee again draws Peru's attention to the fact that, by acceding to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, in accordance with the provisions of article 2 of the Covenant, the State party undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and applicable remedy if a violation is found to have occurred; accordingly, the Committee requests the State to submit to it within 90 days information on the measures adopted to implement the Committee's decisions.

22. The Committee recommends that the provisions of the Civil and Penal Codes should be revised in the light of the obligations laid down in the Covenant, and in particular in its articles 3 and 26. Peru must ensure that laws relating to rape, sexual abuse and violence against women provide women with effective protection and must take the necessary measures to ensure that women do not risk their life because of the existence of restrictive legal provisions on abortion.

23. The Committee recommends that the Government should adopt the legislation necessary to allow political parties to operate effectively and democratically and fully to implement the rights protected by articles 22 and 25 of the Covenant.

24. The Committee recommends that education programmes should be established for children and for the community in order to develop a thorough understanding of the principles of respect for human rights and of tolerance and of the role these principles play in the development of a sound and stable democracy.

25. The Committee hopes that, in its next periodic report, Peru will include information on the progress made to extend to women in Peru full enjoyment of the rights enshrined in the Covenant, particularly in the spheres with which the Committee is concerned (see paras. 13, 14, 15 and 16), together with detailed information on how it is complying with the provisions of article 10 of the Covenant.



International Covenant
on Civil and

Distr.
GENERAL

CCPR/C/79/Add.73
8 November 1996

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

Germany

1. The Committee considered the fourth periodic report of Germany (CCPR/C/84/Add.5) at its 1551st to 1553rd meetings, held on 4 and 5 November 1996 (CCPR/C/SR.1551-1553), and adopted 1/ the following observations:

A. Introduction

2. The Committee welcomes the presence of a high level delegation. It expresses its appreciation for the quality of the report, and the detailed, frank and competent manner in which the delegation answered written and oral questions. The Committee notes with satisfaction that this information enabled it to engage in a highly constructive and fruitful dialogue with the State party.

B. Factors and difficulties impeding the implementation of the Covenant

3. The Committee notes that the process of reunification of Germany has posed particular problems for the uniform application of the Covenant throughout the territory of Germany. The extension of the political, economic, and social system of the western part of the State to the territory of the former German Democratic Republic (GDR) has posed novel, difficult and sensitive questions.

1/ At its 1558th meeting, held on 7 November 1996.

C. Positive aspects

4. The committee welcomes the fact that the reunification of Germany has enabled people of the former GDR to enjoy many of the rights and freedoms protected by the Covenant which were formerly denied to them.

5. The Committee notes with satisfaction that Germany has acceded to both Optional Protocols to the Covenant.

6. The Committee greatly appreciates the role of the Federal Constitutional Court's role in protecting individuals against the violation of their rights as established by the Basic Law and ensuring conformity of legislation with the Basic Law.

7. The Committee welcomes the adoption of the Second Equal Treatment Act to advance the interests of women in the federal public administration, and the modification of the EC adaption law to ensure that the ban on discrimination is more effectively applied.

8. The Committee appreciates the measures adopted for granting compensation and providing rehabilitation to those who suffered injustice at the hands of the Socialist Unity Party (SED) regime in the former GDR.

9. The Committee welcomes the efforts made by the State party to counter racism, anti-Semitism and xenophobia, though it regrets that this phenomenon is still persisting.

10. The Committee appreciates that Germany has provided temporary residence to a very large number of refugees from Bosnia and Herzegovina. The Committee welcomes the assurance given by the delegation that the return of these refugees will be primarily through voluntary repatriation and if any involuntary repatriation is made, it will be only in coordination with the Government of Bosnia and Herzegovina and the Office of the United Nations High Commissioner for Refugees, and will be subject to challenge by judicial review. The Committee appreciates the assurance that no repatriation will take place to minority areas in Bosnia and Herzegovina or to majority areas which are not considered safe.

D. Principal subjects of concern and suggestions and recommendations

11. The Committee expresses its concern that there exist instances of ill-treatment of persons by the police, including foreigners and particularly members of ethnic minorities and asylum seekers. In this regard, it is concerned that there is no truly independent mechanism for investigating complaints of ill-treatment by the police. The Committee therefore recommends the establishment of independent bodies throughout the territory of the State party for the investigation of complaints of ill-treatment by the police.

12. Though the Committee finds that programmes of education of young people and training of police officers concerning racism, anti-Semitism and xenophobic attitudes have been started, it regrets that broader educational

and training programmes in human rights values does not appear to have received the same level of support. The Committee also expresses its concern that despite significant efforts by the Government, racism, xenophobia and anti-Semitism still persist among certain segments of the population. The Committee thus recommends that efforts to educate the youth and train the police that racism and xenophobia are violative of basic human dignity, contrary to fundamental values and constitutionally and legally impermissible, should be intensified and urges that such education and training should be placed in the wider context of human rights education and training. The Committee urges the Federal and Länder Governments to introduce courses in human rights in school, colleges and universities and also in police and defence academies with a view to strengthening a culture of human rights.

13. The Committee is concerned that the definition of minorities as "ethnic or linguistic groups who have a traditional area of settlement in particular regions", as stated in paragraph 244 of the report, is much too restrictive in terms of article 27 of the Covenant. The Committee is of the view that article 27 applies to all persons belonging to minorities whether linguistic, religious, ethnic or otherwise including those who are not concentrated or settled in a particular area or a particular region or who are immigrants or who have been given asylum in Germany.

14. The Committee regrets that Germany has made a reservation excluding the competence of the Committee under the Optional Protocol with regard to violation of rights as protected by article 26 of the Covenant.

15. The Committee expresses its concern that solitary confinement can be imposed for a period of up to three months and can be further extended by court order.

16. The Committee is concerned that membership in certain religious sects as such may in some Länder of the State party disqualify individuals from obtaining employment in the public service, which may in certain circumstances, violate the rights guaranteed in articles 18 and 25 of the Covenant. The Committee also recommends the State party to discontinue the holding of "sensitizing" sessions for judges against the practices of certain designated sects.

17. The Committee expresses its concern that the criteria used to evaluate for retaining or dismissing former GDR public servants, including judges and teachers, are vague and leave open the possibility for deprivation of employment on the basis of political opinions held or expressed. The Committee therefore suggests that the criteria for dismissing public servants of the former GDR be made more precise so that no public servant will be dismissed on the ground of political opinion held or expressed by him or her.

18. The Committee is concerned that there is an absolute ban on strikes by public servants who are not exercising authority in the name of the State and are not engaged in essential services, which may violate article 22 of the Covenant.

19. The Committee is concerned that the State party has not provided information in respect of the right to form and join trade unions (art. 22 of the Covenant) or on aspects of the rights of children (art. 24 of the Covenant) on the ground that information had been provided to another treaty body. In this regard, the Committee reminds the State party that reports under article 40 of the Covenant should provide information in respect of all Covenant rights.
